

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34379

STATE OF IDAHO,)	2009 Unpublished Opinion No. 393
)	
Plaintiff-Respondent,)	Filed: March 23, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
BRET R. CAMPBELL,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Judgment of conviction for rape, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Bret R. Campbell appeals from his judgment of conviction for rape. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Two male co-workers, R.B. and S.F., were temporarily working in Idaho and resided in separate suites at a hotel. R.B. entered into an intimate relationship with N.L., a worker at the hotel. One night, R.B. and N.L. went to a bar where they met Campbell, who recognized R.B. from a previous introduction. After the bar closed, the three were highly intoxicated, and R.B. and N.L. invited Campbell to S.F.'s hotel suite to sober up. After conversing for a time with S.F. and Campbell, R.B. and N.L. went into the bedroom and engaged in sexual relations. Campbell made comments to S.F. indicating a desire to have sexual relations with N.L. as he watched R.B.

and N.L. through a break in the blinds of a patio window. Campbell also opened the bedroom door and took pictures with his cell phone.

Later in the evening, R.B. returned to his own room while N.L. stayed in the bedroom asleep. Campbell entered the bedroom, removed his clothing, and proceeded to have vaginal intercourse with N.L. while she slept on her stomach. When N.L. awoke she thought it was R.B. and told him to stop. Campbell laughed and told her that the joke was on her. Upon realizing that it was not R.B., N.L. screamed and became hysterical. Hearing the scream, S.F. saw Campbell run out of the bedroom with his clothes in hand and hide behind the curtains. According to S.F., Campbell appeared amused that N.L. had thought he was R.B. Campbell then got dressed and left while S.F. went to get help from R.B.

Campbell was later arrested and charged with rape. I.C. § 18-6101. After the state's presentation of evidence at trial, Campbell moved for a judgment of acquittal because N.L. had testified that, based on her level of intoxication that night, she could not remember to whom she had given her consent to sexual relations and could not testify that she did not consent.¹ The district court denied the motion, holding that there was enough evidence that N.L. was asleep or otherwise unconscious of the nature of the act to submit the question to the jury. The jury found Campbell guilty. After the close of trial, Campbell again moved for a judgment of acquittal. The district court denied the motion, concluding there was sufficient evidence for the jury to conclude that N.L. was unconscious of the nature of the act.

The district court sentenced Campbell to a unified term of eight years, with a minimum period of confinement of two years, but retained jurisdiction. Subsequently, the district court relinquished jurisdiction and ordered execution of Campbell's sentence. However, the district court reduced Campbell's sentence to a unified term of seven years, with a minimum period of confinement of one year. Campbell appeals, challenging the denial of his motions for acquittal based on insufficiency of the evidence.

¹ Campbell testified at trial that he removed his clothes and sat next to N.L. on the bed, at which time she performed sexual acts on him of her own volition until she realized it was not R.B.

II. ANALYSIS

Idaho Criminal Rule 29 provides that when a verdict of guilty is returned, the court, on motion of the defendant, shall order the entry of a judgment of acquittal if the evidence is insufficient to sustain a conviction of the offense. The test applied when reviewing the district court's ruling on a motion for judgment of acquittal is to determine whether the evidence was sufficient to sustain a conviction of the crime charged. *State v. Fields*, 127 Idaho 904, 912-13, 908 P.2d 1211, 1219-20 (1995). When reviewing the sufficiency of the evidence where a judgment of conviction has been entered upon a jury verdict, the evidence is sufficient to support the jury's guilty verdict if there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991). We do not substitute our view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *Knutson*, 121 Idaho at 104, 822 P.2d at 1001; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Moreover, we consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001.

Idaho Code Section 18-6101 provides, in pertinent part:

Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under any one (1) of the following circumstances:

....

5. Where she is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

- (a) Was unconscious or asleep;
- (b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

At trial, N.L. testified that she had difficulty remembering the details of the evening of the rape between the time she left the bar with R.B. and when she awoke to Campbell engaging her in

sexual intercourse. She testified that she only remembered putting some money in the jukebox. After that she recalled:

[N.L.]: I woke up and I was in [R.B.'s] bed and I was laying down
and --
[Prosecutor]: What position were you in?
[N.L.]: I was laying on my stomach. And he was behind me, and I
was telling him to stop.
[Prosecutor]: Who did you think was behind you?
[N.L.]: [R.B.]
....
[N.L.]: And so, I'm saying, "[R.B.], knock it off. Stop."
....
[Prosecutor]: Where was the sex taking place on your body? Vaginally?
[N.L.]: Vaginally.
....
[N.L.]: And so, I'm telling him, "Stop. Stop." And I hear him
laugh, and he leans down and says, "Ha-ha. The joke is on you." And so, I
turned around, and it was not [R.B.].
[Prosecutor]: Did you know who it was? No?
....
[N.L.]: No.
....
[N.L.]: I just started screaming, "You're not [R.B.]." "You're not
[R.B.]." "I don't know who you are."
[Prosecutor]: What did that person say to you?
[N.L.]: He just laughed, and then I started trying to find all my
stuff.

Later at trial, R.B. testified that he and N.L. met Campbell at the bar. Campbell recognized R.B. from a game of pool on a previous occasion. After closing, R.B. and N.L. invited Campbell to S.F.'s suite to sober up. Thereafter, R.B. testified:

[Prosecutor]: Did you get up from the bed sometime in the early-morning
hours?
[R.B.]: Yes.
[Prosecutor]: And when you got up, who was in the bed with you?
[R.B.]: [N.L.]
[Prosecutor]: Do you recall anybody else being in the bed with you?
[R.B.]: No.

Also at trial, S.F. testified that R.B., N.L., and Campbell returned to his room about 2:00 a.m. S.F. had not had anything to drink that evening. He testified that, at some point after their conversation, R.B. and N.L. went into the bedroom and that Campbell made suggestive

comments about his desire to be with N.L. Eventually, S.F. fell asleep but testified that he thereafter awoke as R.B. left the room to return to his own room. The next thing he remembered, he got up to turn off a bathroom light and heard sexual noises coming from the bedroom. Then S.F. recalled:

[S.F.]: Well, the type of noises I was hearing -- I pounded on the door, and I made a comment, "[R.B.], I thought you left."

[Prosecutor]: What happened, then?

[S.F.]: I saw the light come on from under the bottom of the door, and [N.L.] screamed, "You're not [R.B.]!"

[Prosecutor]: Okay. When you say "screamed"?

[S.F.]: It would make the hair on the back of your neck stand up.

[Prosecutor]: What happened next?

[S.F.]: The door comes open. [Campbell] comes running out.

[Prosecutor]: What was he doing when he came running out?

[S.F.]: Had his clothes in his hands. Shoot. I think, actually, he had boxers on, his shoes in his hands, and he made a comment along the lines of, "Dude, she thought I was [R.B.]."

[Prosecutor]: When he said that, what was his emotion like?

[S.F.]: He was smiling, like it was an achievement or an accomplishment.

....

[Prosecutor]: What was [N.L.] doing, emotionally?

[S.F.]: She was crying hysterically.

When Campbell testified at trial, he claimed a series of events that differed from the rest of the witnesses' testimony. He testified that he went into the bedroom while R.B. and N.L. were sleeping, carefully removed his clothes and positioned himself up near the head of the bed by N.L. At that point, he testified that N.L. awoke and engaged in consensual sexual activities with him of her own volition. According to Campbell, R.B. awoke and left the room while he and N.L. were engaged in sexual activity and then, at some later time, N.L. became aware that he was not R.B. and screamed. However, Campbell testified that she seemed more playful than angry and that is why he was amused.

We view this testimony in the light most favorable to the prosecution and do not substitute our views for the jury's findings on witness credibility, weight of the evidence, or reasonable inferences to be drawn therefrom. We conclude that the record contains substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving that N.L. was asleep, unconscious, or otherwise unaware of the nature of the

act at the time that Campbell initiated sexual intercourse with her. Therefore, the district court did not err by denying Campbell's motions for acquittal.

Campbell argues that N.L. testified on cross-examination that she did not know who she consented to have sex with on the night in question and, therefore, the prosecution could not have met its burden beyond a reasonable doubt that N.L. did not consent to sexual intercourse with Campbell. This mischaracterizes N.L.'s testimony as she clearly testified that she was asleep before Campbell began having sex with her and, therefore, could not have consented to his acts. Further, N.L. testified that she would never have allowed Campbell to have sexual intercourse with her. Upon discovering that it was Campbell and not R.B. who was having sexual intercourse with her, N.L. became hysterical. This behavior is not consistent with a woman who allegedly consented to sexual relations with Campbell. If the jury believed N.L.'s testimony, it could have reasonably inferred that she did not give her consent for Campbell to initiate sexual intercourse with her. Additionally, N.L. testified that Campbell told her that the joke was on her when she mistakenly spoke to him as R.B. It could be inferred by the jury that this statement and Campbell's conduct following N.L.'s hysterical reaction was not consistent with a man who just had sexual intercourse with a consenting woman. Campbell ran from the room with clothes in hand and hid behind the curtains. He smiled and told S.F. that N.L. had mistaken him for R.B. Again, we conclude that there is substantial evidence in the record upon which a reasonable trier of fact could have found that N.L. was unconscious or unknowing of the nature of the act and that she did not consent to sexual intercourse with Campbell. Therefore, the district court did not err by denying Campbell's motions for acquittal based on insufficiency of the evidence.

III.

CONCLUSION

There was substantial evidence in the record upon which a reasonable trier of fact could have found that the prosecution proved that Campbell raped N.L. beyond a reasonable doubt because N.L. was asleep or unknowing of the nature of the act and she did not consent to sexual intercourse. Accordingly, Campbell's judgment of conviction for rape is affirmed.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**